vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.2318 OF 2002

Suresh Sakharam Sarankar
r/o. P/4, Room No.8, P & T
Colony, Sahar, Andheri, Bombay-9
presently residing at
Airoli Naka Room No.887,
Behind Keral Transport
Bhosale Wakar, Navi Mumbai
Mahanagarpalika, Thane Belapur
Road, New Mumbai-400 708 ... Petitioner

V/s.

1. Union of India
through Secretary, Ministry
of Communication Department
of Post, Dak Bhavan, Sansad Marg
New Delhi

2. The Chief Post Master General
Maharashtra Circle, G.P.O. Bombay

3. Director, Postal Services
(City), C/O. The Chief Post Master
General, G.P.O., Bombay

4. Senior Manager
Department of Post Mail
Motor Services, 134-A, Ahire Road
Worli, Bombay ... Respondents

Mr.M.S. Karnik for Petitioner
Mr.A.C. Singh i/b T.C. Kaushik for Respondents

CORAM: **V.G. PALSHIKAR, Ag.C.J &**
SMT.NISHITA MHATRE, J.

DATED: **FEBRUARY 16, 2006**

JUDGMENT (PER SMT.MHATRE, J.):

. By this petition, the petitioner impugns the order of the Central Administrative Tribunal dated

1.7.1999 whereby the Tribunal has confirmed penalty imposed by the appellate authority of compulsory retirement for the charges levelled against the Petitioner.

2. The undisputed facts in the present case are as follows:

The Petitioner was appointed as a Cleaner in the Mail Motor Service Department of the Post on 20.8.1969. On 21.9.1989, a chargesheet was issued to the Petitioner alleging that he had remained absent unauthorisedly and that he had contravened the service rules by proceeding on a fast unto death. An enquiry was held against the Petitioner ex-parte. The Petitioner contends that he did not remain present at the enquiry since the chargesheet alongwith the imputation of charges served on him was in the English language and he could not understand the same. The enquiry officer conducting the enquiry held that the charges levelled against the petitioner were proved by his report on 24.3.1990. The disciplinary authority imposed the penalty of removal from service after accepting the report of the enquiry officer. The petitioner preferred a statutory appeal. The appellate authority by his order dated 21.10.1992 converted the penalty of removal to that of compulsory

retirement on humanitarian grounds. Aggrieved by this decision, the Petitioner filed Original Application No.252 of 1993. After the pleadings were complete, the Application was heard by the Tribunal which has held that the charge of unauthorised absence ought not to have been framed. According to the Tribunal, there was material on record which indicates that a minor penalty had already been imposed on the Petitioner in respect of the same charge for having remained absent on certain days in May and June 1989. The Tribunal rejected the contention of the respondents that the earlier charge was one of remaining absent habitually and that the charge as levelled in the chargesheet dated 21.9.1989 was of unauthorised absence. The Tribunal rightly came to the conclusion that the charge ought not to have been framed since the charge in respect of the absence on the days mentioned could have been incorporated in the earlier chargesheet. Besides, the Tribunal found that although in the earlier chargesheet, it had been mentioned that the applicant was unauthorisedly absent from 5.6.1989 to 8.6.1989, the chargesheet of 21.9.1989 indicated that the Petitioner was actually present on those days but did not perform his duty.

2. As regards the second charge of the Petitioner having gone on a hunger strike, the Tribunal has found

that this action of the Petitioner was in contravention of the service and disciplinary rules applicable to the Petitioner. The Tribunal found that the Petitioner in fact had admitted that he had undertaken a hunger strike and therefore, there was no need to separately prove the charge. The Tribunal was of the view that it had no jurisdiction to interfere with the nature of the penalty imposed by the authorities, the appellate authority having reduced the same to compulsory retirement.

3. Mr.Karnik, appearing for the Petitioner, submits that the chargesheet issued to the Petitioner was not in a language known to him. He further submits that the charge of the Petitioner having undertaken a hunger strike was not established and assuming the same had been proved either by the Petitioner's admission or otherwise, the penalty imposed was too harsh. He urges that the punishment of compulsory retirement is not commensurate with the misconduct committed by the Petitioner, namely, of having undertaken a hunger strike. He, therefore, submits that the judgment of the Tribunal is required to be set aside.

4. The Tribunal has rightly held that there was no need to furnish the chargesheet in a language known to the Petitioner since the Rules applicable permitted the

Petitioner to obtain translations of the documents; the Petitioner not having requested for the same, there is no need to set aside the enquiry on that count. The Tribunal cannot be faulted for this reasoning. However, the punishment of compulsory retirement is one which is to be imposed for grave acts of misconduct. In our opinion, a hunger strike cannot be considered to be a misconduct which warrants such a punishment. The employee's right to strike work is a well recognised right. It is settled law that strike is a weapon in the armoury of the employees to be used in order to have their demands redressed by the employer, when other avenues have failed. The method used for redressal of the grievance may be unjustified but the cause was not. In such circumstances, punishing an employee for exercising such a right, although exercised inadvisedly would not be commensurate with the misconduct alleged.

5. We are conscious of the fact that in ordinary circumstances, we would be required to remand the matter to the Disciplinary Authority to impose a lesser punishment. However, we feel that no fruitful purpose would be served by doing so.

6. The misconduct has occurred in 1989 and the Petitioner has been out of service since October 1992

and has already attained the age of superannuation. In the exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India, we set aside the order of compulsory retirement. The Petitioner who has already retired pursuant to the impugned order will not be entitled to any backwages and consequential benefits while notionally reinstating him till the age of his superannuation. The Petitioner is entitled to reinstatement with continuity of service but without backwages. The deprivation of the backwages would in our opinion be an adequate punishment for the misconduct committed by the Petitioner. However, for the purposes of his pension and gratuity, he would be entitled to have the same computed on the basis that he had retired on attaining the age of superannuation.

7. In the circumstances, the Petition is allowed. Rule made absolute. No order as to costs.

8. Petition is disposed off accordingly.